

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 24902 of 2005(M)

PETITIONER:

**P.VASU, S/O.CHERIYATH, AGED 52 YEARS,
BOAT DRIVER, O/O.THE DEPUTY DIRECTOR OF FISHERIES
ERNAKULAM (RESIDING AT PERUVELETH HOUSE)
P.O.OCHANATHURUTHU, PUTHU VYPIN.**

**BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF FISHERIES
& PORTS, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF FISHERIES,
TRIVANDRUM.**
- 3. THE DEPUTY DIRECTOR OF FISHERIES,
KOTTAYAM.**
- 4. THE DEPUTY DIRECTOR OF FISHERIES,
(ZONAL) ENRKAULAM.**

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 24902/2005 M

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE GO P NO. 1562/99/27/FIN OF THE GOVT. DT. 12/07/99.

EXT.P2. COPY OF THE ORDER NO. A1. 2053/99 OF THE ASST. DIRECTOR OF FISHERIES, KOTTAYAM DT. 20/11/99.

EXT.P3. COOP ORDER NO. 338/2002/L. DIS OF THE DEPUTY DIRECTOR OF FISHERIES, KOTTAYAM 31/7/2002.

EXT.P4. COPY OF THE ORDER OF THE SECRETARY TO GOVT. FISHERIES DEPT. DATED 2/4/2005.

EXT.P5. COPY OF THE ORDER NO. A/1750/2004 DEPUTY DIRECTOR OF FISHERIES, KOTTAYAM DT. 4/5/05.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 24902 of 2005-M

Dated this the 20th day of June, 2007.

J U D G M E N T

The petitioner is a boat driver in the Fisheries Department. According to him, when the writ petition was filed, there were 4 drivers in the Fisheries Department. At present, there are only 2. So, he submits, he belongs to a vanishing category. He joined the department in 1993. Owing to dearth of vacancies, he was retrenched in 1994 and re-appointed in 1997. Ever since 1997, he is continuing in the post of boat driver. He is due to retire by the end of 2007, it is submitted. All along he was being paid the salary of drivers in the Government service. The same is the practice in all other departments, it is pointed out. While the petitioner was drawing salary of driver, which was in the scale of Rs.2750-4625. The salary of the drivers was revised by Ext.P1 to Rs.3050-5230. In the light of the said revision, the petitioner's salary was fixed as per Ext.P2 proceedings of his Controlling Officer dated 20-11-1999. Ext.P3 is the consequential proceedings pursuant to Ext.P2. While so, objection was raised by Ext.P4, by the Government stating that the fixation of the salary of the petitioner in the scale of pay of driver is wrong. Based on that

proceedings dated 2-4-2005, the Fisheries Deputy Director, Kottayam issued Ext.P5 dated 4-5-2005 ordering to cancel the re-fixation and directing to return the excess amount received by the petitioner. This writ petition is filed, challenging Exts.P4 and P5. According to the petitioner, all along he was drawing the salary of driver and his salary was also revised from time to time when the salary of the driver was also revised. So, there was nothing illegal with Exts.P2 and P3. It is also pointed out that there is no separate scale of pay for boat drivers in the Fisheries Department or other comparable departments. So, he prays, to quash the impugned orders, Exts.P4 and P5.

2. The respondents 1 and 2 have filed counter affidavit, stating that Ext.P1 Government Order is meant for general drivers and not for boat drivers. So, the benefit under the said Government Order was wrongly granted to the petitioner. It was also pointed out that the petitioner has given an undertaking to refund any excess amount received by him, while his salary was re-fixed, as per Exts.P2 and P3. So, the respondents pray for dismissal of the writ petition.

3. Heard the learned counsel on both sides. It is not in dispute that the petitioner, who is a boat driver has been paid the salary of general driver of the department. This was the practice continued all

along. The respondents did not have a case that in the Fisheries Department there is a separate scale of pay prescribed for boat drivers. Therefore, I am of the view that he is entitled to get the revised scale of driver as he was all along being paid the salary for that post. Therefore, Exts.P2 and P3 were correctly passed. Therefore, Exts.P4 and P5 are quashed.

The Writ Petition is allowed as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS